

1 HONORABLE RONALD B. LEIGHTON  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 SEAN WILSON, individually and on  
11 behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 PTT, LLC, a Delaware limited liability  
15 company, d/b/a HIGH 5 GAMES, LLC,  
16 a Delaware limited liability company,

17 Defendant.

18 CASE NO. 18-cv-05275-RBL

19 ORDER ON PLAINTIFF'S MOTION  
20 FOR LEAVE TO AMEND  
21 COMPLAINT

22 THIS MATTER is before the Court on Plaintiff Sean Wilson's Motion for Leave to  
23 Amend to add Barbara Lewis as an Additional Named Plaintiff. Dkt. # 93. This is one of several  
24 class action lawsuits brought against various companies that create app-based casino games.  
Wilson, like the plaintiffs in the other lawsuits, contends that these games constitute illegal  
gambling under RCW 9.46.0237 and that former players are thus entitled to recovery under  
RCW § 4.24.070 (the "Gambling Recovery Act"). However, Wilson himself only lost \$1.99  
playing High 5's games; Barbara Lewis lost much more.

Wilson would like to add Barbara Lewis as a named plaintiff to rebut High 5's narrative  
that this lawsuit "has nothing to do with gambling, addiction, or predatory business practices."

1 Motion, Dkt. # 93, at 1. In response, High 5 contends that Wilson cannot add another named  
2 plaintiff because he himself lacks standing to assert claims. Alternatively, High 5 argues that the  
3 Court should not grant leave to amend because it is untimely, brought in bad faith, and will  
4 prejudice High 5. Because the Court holds that amendment is improper under Rule 15(a), it is not  
5 necessary to address High 5's standing arguments.

6 Leave to amend a complaint under Fed. R. Civ. P. 15(a) "shall be freely given when  
7 justice so requires." *Carvalho v. Equifax Info. Services, LLC*, 629 F.3d 876, 892 (9th Cir. 2010)  
8 (citing *Forman v. Davis*, 371 U.S. 178, 182 (1962)). In determining whether to grant leave under  
9 Rule 15, courts consider five factors: "bad faith, undue delay, prejudice to the opposing party,  
10 futility of amendment, and whether the plaintiff has previously amended the complaint." *United  
11 States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) (emphasis added). Among these  
12 factors, prejudice to the opposing party carries the greatest weight. *Eminence Capital, LLC v.  
13 Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Ultimately, whether to grant leave to amend  
14 is "within the discretion of the District Court." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

15 Having weighed Wilson's reasons for amending against the drain on time and resources it  
16 would entail, the Court concludes that allowing another named plaintiff to enter the fray at this  
17 late stage of litigation would be inappropriate. Wilson's rationale for adding Lewis boils down to  
18 a desire for a better "narrative" that highlights the addictive nature of High 5's games. But while  
19 these games may well be addictive, this has no bearing on the success of Wilson's claims or the  
20 likelihood of certifying a class. The definition of "gambling" in RCW 9.46.0237 does not include  
21 an addictiveness requirement. And although Wilson makes much of Lewis's desire to tell her  
22 story, nothing is currently stopping her from doing so. Lewis can submit declarations in support  
23 of Wilson's motions, testify at trial, or contact the media, all without being a named plaintiff.

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1 Most importantly, Lewis will still recover her money if this class action succeeds. It would be  
2 legally pointless—indeed, futile—to add Lewis as a named plaintiff.

3 On the other hand, there are good reasons not to add her. For almost two years, Wilson  
4 and his lawyers have known that he lost a measly \$1.99 on High 5's games and was not severely  
5 addicted. If they thought this was a problem for Wilson's case, there has been ample opportunity  
6 to find another individual who lost more money. Instead, Wilson waited until February 18, 2020  
7 to file his Motion. The cutoff for fact discovery was March 6, and the deadline to certify a class  
8 is fast approaching on June 26.<sup>1</sup> Dkt. # 83. Granting Wilson's request would force the Court to  
9 once again move these dates back. It would also prejudice High 5, who would be compelled to  
10 expend additional time and resources on new discovery related to Lewis and perhaps even a new  
11 motion to compel arbitration. Given Wilson's poor rationale for adding Lewis, these concerns  
12 are enough to justify denying his Motion.

13 Wilson's Motion for Leave to Amend to add Barbara Lewis as an Additional Named  
14 Plaintiff is DENIED.

15 IT IS SO ORDERED.

16 Dated this 6th day of April, 2020.

Ronald B. Leighton

<sup>1</sup> Wilson's Motion argues that "fact discovery remains open, class certification briefing is still five months away," but Wilson knew full well that his motion would only become ripe until *after* the cutoff for fact discovery. Dkt. # 93 at 1.